

9-35.000 INTERNATIONAL PRISONER TRANSFERS

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Introduction

The International Prisoner Transfer Program began in 1977 when the Federal Government negotiated the first in a series of treaties to permit the transfer of prisoners from the countries in which they had been convicted to their home countries. Over thirty countries and nationalities are now parties to prisoner transfer treaties with the United States.

The International Prisoner Transfer Unit (IPTU) of the Office of Enforcement Operations, Criminal Division, is responsible for approving and administering the transfer of prisoners to and from the United States pursuant to the prisoner transfer treaties. Much of the practice and procedure for transfer is governed by 18 U.S.C. § 4100 *et seq.*, with applicable regulations set out at 28 C.F.R. § 527.40 *et seq.*

The United States Attorneys' Offices are responsible for furnishing facts and recommendations to the IPTU that can be considered in deciding whether to approve or deny an offender's request to be transferred to another country. Generally, any relevant facts and recommendations that are requested by IPTU must be supplied promptly (which, absent compelling factors, is within ten days of the request).

The Criminal Resource Manual has a more complete description of the International Prisoner Transfer Program, and the procedures that must be followed

Purpose of the Prisoner Transfer Program	Criminal Resource Manual at 731
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Effect of Transfer	Criminal Resource Manual at 733
Review of Prisoner Transfer Requests	Criminal Resource Manual at 734
Reconsideration of Transfer Requests	Criminal Resource Manual at 735
Role of the United States Attorneys' Offices and Law Enforcement Agencies -- Providing Assistance to the International Prisoner Transfer Unit	Criminal Resource Manual at 736
Sample Form Used by the IPTU to Obtain the Views of the United States United States Attorney's Office	Criminal Resource Manual at 737
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9-35.100 Role of the United States Attorneys' Offices -- Inclusion of Promises Regarding Transfers in Plea Agreements

A prosecutor may promise, as part of a plea agreement, to recommend that a particular defendant/prisoner be transferred pursuant to a treaty to his or her home country to serve his/her sentence. In the alternative, the prosecutor may agree not to oppose the prisoner's request for transfer. The United States Attorney's Office may *not*, however, promise that a transfer will in fact be granted.

The decision to approve or deny a transfer request is based on the legality and overall appropriateness of the requested transfer, and making that decision has been delegated by the Attorney General to the Director and Senior Associate Director of the Office of Enforcement Operations. A myriad of factors enter into the final decision, including in some instances factors of which the United States Attorney's Office has no knowledge. Accordingly, the United States Attorney's Office is not in a position to guarantee that a transfer will be approved in any particular case.

If the United States Attorney's Office agrees (either in writing as part of the plea agreement or orally at the sentencing hearing) to recommend transfer or not to oppose a transfer, this position is binding in subsequent communications, both formal and informal, with the Office of Enforcement Operations.

Attention should be given to the wording of an agreement not to oppose transfer. The prosecution may appropriately promise that the "United States Attorney's Office" will not oppose transfer. However, the prosecution is not in a position to state that "the government" will not oppose transfer, since this language would necessarily include the investigative or law enforcement agency (and possibly other entities), the views of which may in fact differ from those of the United States Attorney's Office. It should also be noted that it is not appropriate to promise non-opposition by the United States Attorney's Office in the hope that the transfer request will ultimately be rejected based upon the contrary views of the investigative or law enforcement agency or upon other factors.